

Construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

November 30, 2004

Dear Xxxxx:

This letter is in response to your letter dated September 8, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am requesting a ruling on a tax issue.

I sell and install equipment in building in the central Illinois area. I am normally liable for the tax since what I install is considered real property. Occasionally, an out of state contractor will hire me to install and supply parts for a local job. The price I sell my products for are dictated by the manufacturer and do not allow me to collect the tax burden from the out of state contractor. These contractor's provide a state of Illinois re-sale certificate, to opt out of the tax burden.

My question is: Since the tangible items sold are transformed into real property, is it legal for me to "re-sell"(without paying use tax) real property to the out of state contractor? The out of state contractor implies that the tax burden is met when they file their sales tax return with the state.

I await your reply,

DEPARTMENT'S RESPONSE:

The tax liabilities regarding construction contractors in Illinois may be found at 86 Ill. Adm. Code 130.1940 and 130.2075. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts. In Illinois, construction contractors are deemed end users of tangible personal

property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If purchases are made from Illinois registered suppliers, the tax is to be paid to those suppliers at the rates in effect at the supplier's location. If purchases are made from out-of-State suppliers not registered to collect Illinois tax, contractors must self-assess this tax and remit it directly to the Department.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to their customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. This reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

As stated above, construction contractors are deemed to be the end users of tangible personal property that is purchased for incorporation into real property. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

Without reviewing the contract between your company and the out-of-State contractor, we cannot determine which scenario is applicable in the situation described in your letter. You may wish to review some of the previous letter rulings issued by the Department, which may be found among the Department's sales tax "Sunshine Letter" rulings on the Department's internet website, under the heading "Legal Research." More specifically, please see general information letter ST-99-0154-GIL regarding a situation similar to the one you have described.

From the limited information provided, it would appear your company would incur Use Tax liability as an end-user on the purchase of tangible personal property for incorporation into real property or your company would have a Use Tax collection obligation on the sale of the parts that you install for the out-of-State contractor. In either case, you should not accept a certificate of resale for the tangible personal property you are installing into real property in Illinois.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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